

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HSBC BANK USA NATIONAL
ASSOCIATION, MORTGAGE LOAN
TRUST PASS-THROUGH CERTIFICATES
SERIES 2007-OA3, AS AGENT OF
DEUTSCHE ALT-A SECURITIES, INC.,

Case No. 2:18-cv-02162-MMD-DJA

ORDER

Plaintiff,

v.

CHICAGO TITLE INSURANCE
COMPANY,

Defendant.

I. SUMMARY

This is a title insurance dispute stemming from litigation over a homeowners' association's ("HOA") foreclosure sale. Before the Court are several motions: (1) Plaintiff HSBC Bank USA National Association, Mortgage Loan Trust Pass-Through Certificates Series 2007-OA3, agent of Deutsche Alt-A Securities, Inc. ("HSBC")'s motion for partial summary judgment that Defendant Chicago Title Insurance Company breached its duty to defend (ECF No. 101);¹ (2) Chicago Title's alternative motion for relief under Federal Rule of Civil Procedure 56(d) (ECF No. 108);² and (3) Chicago Title's motion for leave to file a surreply to HSBC's motion (ECF No. 119).³ Two requests for judicial notice (ECF Nos. 129, 138) and two supplemental briefs (ECF Nos. 136, 137) are also before the

¹Chicago Title responded (ECF No. 105) and HSBC replied (ECF No. 117).

²HSBC responded to this motion as part of its reply in support of its motion. (ECF No. 117 at 21.)

³HSBC responded (ECF No. 121) and Chicago Title replied (ECF No. 130).

1 Court. As further explained below, *Deutsche Bank Nat'l Tr. Co. as Tr. for Registered*
 2 *Holders of Morgan Stanley ABS Cap. I Tr. 2004-HE8, Mortg. Pass-Through Certificates,*
 3 *Series 2004-HE8 v. Fid. Nat'l Title Ins. Co.*, 536 P.3d 915 (Nev. 2023) ("*Deutsche Bank*")
 4 compels the Court to reconsider the key prior order it issued in this case, HSBC is
 5 foreclosed from the relief it seeks in its motion, the Court will deny both of Chicago Title's
 6 pending motions and the requests for judicial notice as moot, and the Court will dismiss
 7 this case, directing entry of judgment in Chicago Title's favor.

8 **II. BACKGROUND**

9 The Court previously found that the CLTA 100.2(1)(a) endorsement covers
 10 HSBC's loss that led to this case, but neither the CLTA 100.2(2)(a) nor ALTA 5
 11 endorsements do.⁴ (ECF No. 86.) HSBC's motion seeks to build on that order, seeking a
 12 declaration that Chicago Title beached its duty to defend when it denied coverage under
 13 the CLTA 100.2(1)(a) endorsement. (ECF No. 101.) Chicago Title's two pending motions
 14 essentially seek more materials to respond to HSBC's motion; one seeks to reopen
 15 discovery and another seeks the Court's leave to raise more arguments in response to
 16 HSBC's reply. (ECF Nos. 108, 119.)

17 However, the legal landscape shifted under the parties' feet when the Nevada
 18 Supreme Court issued the *Deutsche Bank* opinion.⁵ There, the Nevada Supreme Court
 19 ruled that a title insurance policy accompanied by the CLTA 115.2, CLTA 100(1)(a), and
 20 CLTA 100(2)(a) endorsements did not cover Deutsche Bank National Trust Company's
 21 loss in the form of quiet title litigation ending with a declaration that Deutsche Bank's
 22 deed of trust encumbering a property had been extinguished by a foreclosure sale
 23 conducted by the pertinent homeowners' association's foreclosure sale. *See generally*

24
 25 ⁴Neither party contests the Court's prior ruling that neither the CLTA 100.2(2)(a)
 26 nor ALTA 5 endorsements provide coverage. (ECF Nos. 136 at 2, 137 at 2 n.2.) And as
 explained below, the Nevada Supreme Court ruled consistently with the Court as to
 these two endorsements.

27 ⁵Chicago Title asked for a stay because this might happen (ECF No. 97), but the
 28 Court declined to stay the case (ECF No. 100).

1 536 P.3d 915. This, of course, differs from the Court's prior ruling in this case that the
 2 CLTA 100.2(1)(a) endorsement covers HSBC's loss that led to this case.⁶ (ECF No. 86.)

3 The Court accordingly directed supplemental briefing from the parties on the
 4 impact, if any, of *Deutsche Bank* on this case (ECF No. 131), and then gave the parties
 5 more time to file that supplemental briefing until the Nevada Supreme Court issued
 6 remittitur in *Deutsche Bank* (ECF Nos. 133, 135). The parties then filed those
 7 supplemental briefs (ECF Nos. 136, 137), and HSBC filed a request for judicial notice
 8 that accompanies its supplemental brief (ECF No. 138).

9 **III. DISCUSSION**

10 In its supplemental brief, Chicago Title argues that this case has become simple
 11 following *Deutsche Bank*—that the Court should reconsider its prior order, vacate the
 12 portion of it finding coverage under the CLTA 100.2(1)(a) endorsement, deny HSBC's
 13 motion, dismiss HSBC's amended complaint, and enter judgment in Chicago Title's
 14 favor. (ECF No. 136.) HSBC basically argues in its supplemental brief that this case
 15 remains complicated—that this case is distinguishable from *Deutsche Bank* and the duty
 16 to defend would be triggered even if its loss is not covered under the applicable policy.
 17 (ECF No. 137.) The Court agrees with Chicago Title.

18 *Deutsche Bank* dictates the outcome of this case. The reasoning of *Deutsche*
 19 *Bank* is not compatible with the Court's prior reasoning in this case, so the Court must
 20 now follow the Nevada Supreme Court's pertinent reasoning. *See Indus. Indem. Ins. Co.*
 21 *v. United States*, 757 F.2d 982, 985 (9th Cir. 1985) (finding that state law controls the
 22 interpretation of insurance contracts); *CRST Van Expedited, Inc. v. Werner Enterprises,*
 23 *Inc.*, 479 F.3d 1099, 1106 n.6 (9th Cir. 2007) (noting that the United States Court of
 24 Appeals for the Ninth Circuit's interpretation of a California statute does not control over
 25 the California Supreme Court's subsequent interpretation of that statute because "a
 26 State's highest court is the final judicial arbiter of the meaning of state statutes....")

27 ⁶HSBC alleges in this case "that the CLTA 100.2 endorsements are equivalent to
 28 the CLTA 100 endorsements." (ECF No. 86 at 4 (citing ECF No. 62 at 5).)

(quoting *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975)). Indeed, while the Court found that the pertinent statute worked together with the conditions, covenants, and restrictions (“CC&Rs”) of a particular HOA to cut off or subordinate the interest of a holder of a first deed of trust when an HOA sale is properly conducted, see *Wells Fargo Bank, N.A. v. Fidelity National Title Insurance Company*, Case No. 3:19-cv-00241-MMD-CSD, ECF No. 52 at 14-17 (D. Nev. Sept. 20, 2022), the *Deutsche Bank* court found that the superpriority lien “was a product of NRS [§] 116.3116.” *Deutsche Bank*, 536 P.3d at 926. For this reason, the *Deutsche Bank* court similarly found that any applicable CC&Rs could and would not cut off, impair, or subordinate a deed of trust that encumbered the pertinent property—the lien was entirely statutory. See *id.* And the *Deutsche Bank* court found that the CLTA 100(1)(a) endorsement did not cover Deutsche Bank’s loss that led to that case. See *id.* The Court’s order finding coverage under the CLTA 100.2(1)(a) endorsement is accordingly no longer tenable considering *Deutsche Bank*. Moreover, the *Deutsche Bank* court found that the duty to defend never arose in that case because there was never any potential for coverage. See *id.* at 927.

HSBC’s attempts to convince the Court not to take Chicago Title’s proposed approach in view of *Deutsche Bank* are unpersuasive. HSBC first suggests that *Deutsche Bank* is distinguishable because the Nevada Supreme Court did not address any policy exclusions in it (ECF No. 137 at 2-3), but the Nevada Supreme Court did not because it determined that the endorsements did not cover Deutsche Bank’s losses, see *Deutsche Bank*, 536 P.3d at 927 n.8. The Court accordingly does not need to address either side’s arguments regarding exclusions either. HSBC next argues that the CC&Rs applicable to this case contain provisions rendering *Deutsche Bank* distinguishable (ECF No. 137 at 3-5), but *Deutsche Bank* turns on the key holding that the NRS Chapter 116 lien is entirely statutory, so the particularities of specific CC&Rs are irrelevant because CC&Rs never cause the losses at issues in this and similar cases. See 536 P.3d at 926. HSBC finally argues that Chicago Title still could have breached its duty to defend even though there is no coverage under *Deutsche Bank* (ECF No. 137 at 5-8), but the Court

1 rejects that argument in the same way that the Nevada Supreme Court rejected it in
2 *Deutsche Bank*: because there has “never been a potential for coverage[,]” “the duty to
3 defend did not arise[.]” 536 P.3d at 927.

4 In sum, *Deutsche Bank* compels the conclusion that there was never coverage for
5 HSBC’s loss that led to this case, and that Chicago Title did not breach its duty to
6 defend. The Court will accordingly reconsider its key prior order, dismiss the amended
7 complaint, deny HSBC’s motion, and deny both Chicago Title’s motions and the requests
8 for judicial notice as moot.⁷ See, e.g., *Amarel v. Connell*, 102 F.3d 1494, 1515 (9th Cir.
9 1996), as amended (Jan. 15, 1997) (“the interlocutory orders and rulings made pre-trial
10 by a district judge are subject to modification by the district judge at any time prior to final
11 judgment”) (citation omitted).

12 **IV. CONCLUSION**

13 The Court notes that the parties made several arguments and cited several cases
14 not discussed above. The Court has reviewed these arguments and cases and
15 determines that they do not warrant discussion as they do not affect the outcome of the
16 pending motions.

17 It is therefore ordered that HSBC’s motion for partial summary judgment (ECF No.
18 101) is denied.

19 It is further ordered that Chicago Title’s motion for relief under Federal Rule of
20 Civil Procedure 56(d) (ECF No. 108) is denied as moot.

21 It is further ordered that Chicago Title’s motion for leave to file a surreply (ECF
22 No. 119) is denied as moot.

23 It is further ordered that both parties’ requests for judicial notice (ECF Nos. 129,
24 138) are denied as moot.

25
26 ⁷Chicago Title’s motions and the requests for judicial notice are moot because the
27 Court must resolve this case in Chicago Title’s favor, so Chicago Title does not need the
28 various materials it seeks and the Court need not—and does not—consider the further
arguments in Chicago Title’s proposed surreply or supported by the materials that both
sides ask the Court to take judicial notice of.

1 It is further ordered that the Court vacates only the portion of its prior order finding
2 that the CLTA 100.2(1)(a) endorsement covers HSBC's loss that led to this case (ECF
3 No. 86 at 4, 7).

4 It is further ordered that, for clarity and consistent with *Deutsche Bank*, neither the
5 CLTA 100.2(1)(a), CLTA 100.2(2)(a), nor ALTA 5 endorsements cover HSBC's loss that
6 led to this case.

7 It is further ordered that HSBC's amended complaint (ECF No. 62) is dismissed in
8 its entirety.

9 The Clerk of Court is directed to enter judgment accordingly—in Chicago Title's
10 favor—and close this case.

11 DATED THIS 26th Day of January 2024.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE